

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**KEVIN E. BURNS,**

**Plaintiff,**

**vs.**

**FIRST NATIONAL BANK OF OMAHA,**

**Defendant.**

**8:17CV289**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Objection to Magistrate Judge Cheryl R. Zwart's Order, ECF No. 32, denying pro se Plaintiff Kevin Burns's Motion to Compel Discovery, ECF No. 24. In Burns's objection, he also continues<sup>1</sup> to argue that Magistrate Judge Zwart should recuse herself from this case.

When a party objects to a magistrate judge's order on a nondispositive pretrial matter, a district court may set aside any part of the order shown to be clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Chase v. Comm'r of Internal Revenue*, 926 F.2d 737, 740 (8th Cir. 1991) (internal quotation marks omitted). "An order is contrary to law if it fails to apply or misapplies relevant statutes, case law, or rules of procedure." *Haviland v. Catholic Health Initiatives-Iowa, Corp.*, 692 F. Supp. 2d 1040 (S.D. Iowa 2010).

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<sup>1</sup> Judge Zwart denied Burns's earlier Motion to Disqualify, ECF No. 22, and the undersigned Judge overruled his Objection to that denial, ECF No. 30.

Magistrate Judge Zwart found that Defendant First National Bank of Omaha already produced much of the evidence Burns requested in his Motion to Compel. She also found that the rest of the evidence either did not exist or was not relevant to Burns's claims. Burns failed to demonstrate that any part of the Order was clearly erroneous or contrary to law under Fed. R. Civ. P. 72(a). Further, this Court has already denied his first request to have Magistrate Judge Zwart recused and he has raised nothing in his second request that warrants recusal.

Accordingly,

IT IS ORDERED: The Objection to Magistrate Judge Cheryl R. Zwart's Order, ECF No. 32, is overruled.

Dated this 29th day of June, 2018.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge